

Notice of Allowability

Application No.

10/042,066

Examiner

Scott D. Priebe

Applicant(s)

AUSUBEL ET AL.

Art Unit

1632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to the reply of 22 Nov. 2004.
2. ☒ The allowed claim(s) is/are 1-22.
3. ☒ The drawings filed on 27 February 2004 are accepted by the Examiner.
4. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

5. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 6. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
7. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

- | | |
|---|--|
| 1. <input type="checkbox"/> Notice of References Cited (PTO-892) | 5. <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 2. <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 6. <input type="checkbox"/> Interview Summary (PTO-413),
Paper No./Mail Date _____. |
| 3. <input type="checkbox"/> Information Disclosure Statements (PTO-1449 or PTO/SB/08),
Paper No./Mail Date _____ | 7. <input checked="" type="checkbox"/> Examiner's Amendment/Comment |
| 4. <input type="checkbox"/> Examiner's Comment Regarding Requirement for Deposit
of Biological Material | 8. <input checked="" type="checkbox"/> Examiner's Statement of Reasons for Allowance |
| | 9. <input type="checkbox"/> Other _____. |

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EXAMINER'S AMENDMENT

The Examiner charged with examination of your application has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Primary Examiner Scott D. Priebe, Ph.D., Group Art Unit 1632.

An examiner's amendment to the record appears below. Should the changes and/or additions be unacceptable to applicant, an amendment may be filed as provided by 37 CFR 1.312. To ensure consideration of such an amendment, it MUST be submitted no later than the payment of the issue fee.

The application has been amended as follows:

The following has been inserted immediately following the title and before line 7 on page 1 of the specification:

-- This application is a continuation-in-part of U.S. application number 09/827,789 filed on April 6, 2001, which in turn claims benefit of U.S. provisional application 60/195,097, filed on April 6, 2000. --

Lines 12-14 on page 1 have been deleted.

Claims 23-86 have been cancelled. These claims are directed to inventions non-elected without traverse in the reply filed 27 May 2003.

EXAMINER'S REASONS FOR ALLOWANCE

The following is an examiner's statement of reasons for allowance:

Applicant's arguments in reply to the rejection under 35 USC 101 are convincing and the rejection has been withdrawn. It is noted by the Examiner that the utility of using nematodes as a model system for studying host-pathogen interaction in general, and in particular the genetic basis for such interaction, had been established prior to the filing of the instant application. The relevance of this model system for gaining insight into pathogenesis in other organisms, such as mammals, had also been previously recognized. For example, Tan et al., Proc. Natl. Acad. Sci. USA 96: 715-720, 1999 (see PTO-1449 of 27 Feb. 2004), had shown that many of genes responsible for mediating pathogenesis of *Pseudomonas aeruginosa* infection in nematodes were also responsible for mediating pathogenesis in plants and mammals. Consequently, it is to be expected that at least some host genes whose products mediate host defense or are exploited by a pathogen would be homologous. Applicant's invention is directed to the other side of the equation, and provides tools, i.e. susceptible mutant nematodes, for studying host genes that are involved in host defense against pathogens, and provides for a more sensitive means, i.e. the mutant nematodes, for identifying compounds that may bolster host defenses against pathogens. The identity of the host gene(s) need not be known for the latter use.

Withdrawn claims 12-22 have been rejoined with the elected claims 1-11, and are allowed. Claims 12-22 require the originally elected method as preliminary steps, and thus are also free of the prior art of record. The use of the invention of claims 12-22 in the identification of nematode genes that are involved in mediating host defenses against pathogens is deemed to be useful in its own right as a tool for studying the basis of host-pathogen interaction in general,

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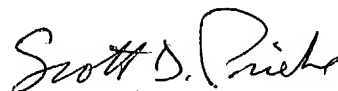
not just in nematodes, which is similar to the situation in *In re Folkers*; and extends the utility of the invention of claims 1-11 due to the additional knowledge it would provide. This additional information would help focus future investigation on compounds for bolstering a host's innate defense against pathogens.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Scott D. Priebe whose telephone number is (571) 272-0733. The examiner can normally be reached on M-F, 8:00-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Amy J. Nelson can be reached on (571) 272-0804. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Scott D. Priebe
Primary Examiner
Art Unit 1632